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BRIEF FOR RESPONDENTS IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1539

JOSEPH T. WATKINS,
Petitioner,

v.

WALTER E. WASHINGTON, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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INDEX

Subject Index	Page
Question Presented	1
Counter-Statement of the Case	2
Reasons for Denying the Writ	4
Conclusion	5

Cases Cited

Berenyi v. *Immigration Director* (1967), 385 U. S. 630	5
Fields v. *United States* (1907), 205 U. S. 292	4
Magnum Co. v. *Coty* (1923), 262 U. S. 159	5
Watkins v. *Washington* (1972), 153 U. S. App. D. C. 298, 472 F. 2d 1373	2

Rule of Court Cited

Rules of the Supreme Court of the United States, Rule 19	4

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BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the decision of the Court of Appeals that petitioner is not entitled to promotional and back pay rights, beyond those granted him as a result of extensive administrative and judicial proceedings, presents a question of sufficient substance and importance to warrant invocation of this Court's certiorari jurisdiction.

COUNTER-STATEMENT OF THE CASE

Petitioner originally brought this action in the United States District Court for the District of Columbia alleging racial discrimination in the employment and personnel policies of the Housing Division of the Department of Licenses and Inspections, now the Department of Economic Development, of the District of Columbia Government, and seeking an award of back pay and declaratory and injunctive relief. The District Court entered judgment awarding back pay and denying other requested relief. On appeal, the United States Court of Appeals for the District of Columbia Circuit affirmed the back pay award and directed the District Court (1) to remand the case for further administrative proceedings on petitioner's promotional status, designed to consider both the availability of positions and the qualifications of petitioner, and (2) to enter an order enjoining further racial discrimination by the Housing Division and requiring that steps be taken to eliminate the effects of past discrimination. *Watkins* v. *Washington*, 153 U. S. App. D. C. 298, 472 F. 2d 1373 (1972). (Pet. App. at 1-2, 30-31.)

On remand, the District Court, on February 28, 1973, entered an order as directed. On August 24, 1973, a hearing committee appointed pursuant to the order determined:

> "* * * that * * * [petitioner] is entitled to a GS-12 position in the Housing Division at this time and should be considered for nothing less unless he personally is willing to accept a grade 11.
>
> "The panel respectfully requests that this offer of a GS-12 position be offered him, not only because he is qualified for such a postion, but because had he not been the object of such discrimination which the court found to be practiced against him, he would have no doubt attained an even higher grade just on his initiative and merit."

Although the committee's recommendation was subject to review by the Commissioner of the District of Columbia, the Director of the District of Columbia Office of Human Rights, Department of Economic Development, voluntarily offered petitioner a GS-11 position on October 15, 1973, which petitioner declined (Pet. App. at 2-3).

On November 26, 1973, petitioner filed a *pro se* motion for enforcement of the order entered by the District Court on remand from the Court of Appeals. Ruling on the motion, the District Court enjoined the government from offering any position from GS-12 through GS-15 to any person other than petitioner while the hearing committee's recommendation was pending final action by the Commissioner. However, the court denied petitioner's motions for enforcement and discovery in aid of enforcement. Petitioner again appealed to the United States Court of Appeals for the District of Columbia Circuit. During the pendency of the appeal, the Commissioner of the District of Columbia, on June 13, 1974, issued his final decision approving the hearing committee's recommendations and ordering that the Department of Economic Development:

> "1. Promote * * * [petitioner] to the position of GS-11 Housing Improvement Specialist, now available in the Housing Division.
>
> "2. Offer * * * [petitioner] the next available GS-12 position in the Housing Division." (Pet. App. at 4.)

On July 19, 1974, petitoner was appointed to the GS-12 position of Supervisory Housing Improvement Specialist (Pet. App. at 3-4).

In its decision rendered February 6, 1975, the Court of Appeals held that the District Court did not abuse its discretion in denying petitioner's motion to enforce judgment

and affirmed the judgment of the District Court, stating, *inter alia,* that:

> "* * * Under the District Court's original judgment entered in this case Watkins has received back pay for the time during which the Housing Division discriminated against him. He has been promoted to the first vacant GS-12 position, as recommended by the hearing committee and Commissioner. He has accordingly received all the the relief to which he is entitled under his original action and the judgment entered therein which he now seeks to have enforced." (Pet. App. at 7-8.)

Petitioner thereafter petitioned this Court for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Petitioner advances no ground for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. And see *Fields* v. *United States,* 205 U. S. 292, 296 (1907). The instant case involves nothing more than a challenge to the sufficiency of the remedy ordered in a case concerning a municipal employee's discrimination claim. The record shows that as a result of various administrative and judicial proceedings and careful consideration of the matter by two lower federal courts, petitioner, formerly a grade GS-8 (Pet. App. at 51), has been promoted to a grade GS-12 and granted an award of back pay designed to compensate him for past discrimination. Far from suggesting the kind of egregious error calling for an exercise of certiorari jurisdiction, the case presents a reasonable exercise of discretion by government officials and lower federal courts as to the proper extent of remedial relief. The concurrent determinations of two lower federal courts that petitioner has been accorded all

the relief to which he is entitled surely do not rise to a level warranting review by this Court, given petitioner's failure to advance an obvious and exceptional showing of error which might otherwise justify issuance of the requested extraordinary writ. See *Berenyi* v. *Immigration Director,* 385 U. S. 630, 635 (1967); *Magnum Co.* v. *Coty,* 262 U. S. 159, 163 (1923).

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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